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EXAMINER

LE, HUYEN D

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-2 ,5, 7,10,12,15,17 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dahl in view of Tegg et al.

Dahl teaches a toilet shelter employing four walls which can be folded to a state best shown in Fig. 2 where adjacent walls lie superimposed. Lacking in Dahl is a base which is circumscribed by the side walls. Tegg et al teach a knock down toilet where base 11 is employed and shown to be circumscribed by the sides of the unit. As both teach toilet enclosures, it would have been obvious to the ordinary artisan to provide Dahl with a base and roof cooperating with the sides as taught by Tegg et al as the use of perfecting features of one device in the environment of another like device would have been prima facie obvious to the ordinary artisan, in order to glean the properties of said features.

Alternatively it would have been obvious to provide for the use of the wall connection scheme of Dahl to replace the scheme of Tegg et al as the two would have constituted obvious alternative assembly/disassembly schemes both shown used in identical art devices. The claim 5 "commode" is taught by Tegg et al at 53 and as Dahl

teaches in col. 1, line 17, "a temporary privy" it would have been obvious to employ a "commode" therein.

The various states of folding are nothing more than method of intended use and do not patentably define in this apparatus claim environment. Furthermore, Dahl is capable of attaining any folded state that the instant device can attain.

3. Claims 3, 8 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 1 above, and further in view of Braxton '836.

The latter teaches, in col. 3, lines 21+, the use of rivets to connect hinges to wall panels of portable toilets, the use of which in Dahl would have constituted an obvious expedient known to the ordinary artisan.

Response to Arguments

4. Applicant's arguments filed 01/06/2010 have been fully considered but they are not persuasive.

Applicant argues that the portable toilet shelter shown in Fig. 2 Dahl is not a transportable state of when the shelter is collapsed as the final stackable transport state of the claimed closure. Examiner disagrees with applicant. The language "in a full disassembled final folded state" does not include any additional structures which distinguish over the structure of the Dahl portable toilet shelter. Applicant's arguments with respect to the disassembled enclosure in the final state have been met by Dahl. The assertion also appears to mirror those pages 5-16 of the appeal brief of 4/10/06 and accordingly find rebuttal in the decision of the Board of Appeals tendered 3/28/07.

Applicant raises the issue of prima facie case of obviousness that there is no implication, suggestion or inference whatsoever to combine the teaching of Dahl and Tegg et al to obviate the applicant's invention because the references are contrary to each other (pages 17-20 of the remarks). Examiner disagrees with applicant. Again, Dahl teaches a portable shelter as claimed but lacks a base and a roof. On the other hand, Tegg et al teach a portable shelter having a base and a roof. The motivation to combine these references is based on the facts that both references teach a portable toilet shelter. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of Dahl and Tegg et al to provide a shelter with a loop enclosure, a base and a roof. The issue has been addressed before the Board of Appeals. The prima facie in this case is found proper in the decision of the Board of Appeals tendered 3/28/2007.

Finally, the amendment filed on 01/06/2010 does not change the previously claimed structures. Accordingly, the rejections tendered before the Board of Appeals are repeated.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

Art Unit: 3751

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson, can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Huyen Le/
Primary Examiner, Art Unit 3751